

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAY SHIN,

Plaintiff,

v.

ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY,

Defendant.

CASE NO. 2:21-CV-1524-DWC

ORDER ON PARTIAL MOTION FOR
SUMMARY JUDGMENT

This matter comes before the Court on Defendant Allstate Insurance Company's Motion for Partial Summary Judgment on Plaintiff's Extracontractual IFCA, CPA, and Bad Faith Claims. Dkt. 27.¹ Having considered the parties' briefing and the relevant record, the Partial Motion for Summary Judgment (Dkt. 27) is granted. Plaintiff Jay Shin's IFCA, bad faith, and CPA claims are dismissed with prejudice.

¹ Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. Dkt. 10.

I. Background

In the Complaint, Shin alleges that he was injured in a motor vehicle accident on May 2, 2019 (“the accident”). Dkt. 1-1. On the date of the accident, Shin was insured by Allstate and his policy included underinsured motorist coverage (“UIM”). *Id.* at ¶¶ 3.6, 3.9. The at-fault-driver was uninsured, and Shin made a claim to Allstate for payment of his UIM policy limits and a waiver of the \$10,000 personal injury protection (“PIP”) limit paid by Allstate. *Id.* at ¶¶ 3.10-3.11. Shin contends Allstate unreasonably refused to compensate him for the damages he sustained in the accident. *See id.* at ¶ 3.13. As a result, Shin alleges Allstate is liable under theories of breach of contract and bad faith. *Id.* at ¶¶ 4.1-5.4. He also alleges Allstate violated Washington’s Insurance Fair Conduct Act (“IFCA”) and Washington’s Consumer Protection Act (“CPA”). *Id.* at ¶ 6.1-7.5.

Allstate filed the Partial Motion for Summary Judgment on April 27, 2023, seeking dismissal of Shin’s bad faith, IFCA, and CPA claims. Dkts. 27, 28 (supporting evidence). Shin filed his Response on May 15, 2023. Dkts. 30, 31 (supporting evidence). On May 19, 2023, Allstate filed its Reply. Dkts. 32, 33 (supporting evidence). The parties did not request oral argument and the Court finds this matter can be resolved on the record without oral argument.

II. Discussion

A. Standard of Review

Summary judgment is proper only if the pleadings, discovery, and disclosure materials on file, and any affidavits, show that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim in the case on which the nonmoving party has the

burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must present specific, significant probative evidence, not simply “some metaphysical doubt”); *see also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).

B. Evidence

i. *The Collision*

The record shows the vehicle Shin was driving was rear-ended by another vehicle on May 2, 2019. *See* Dkt. 28-1 at 2. The accident report states that Shin and the at-fault-driver were stopped at a red light. *Id.* at 2-3. When the at-fault-driver was setting his soda down, he heard a honk and thought someone was telling him to drive; he took his foot off the gas and rear-ended Shin. *Id.* The at-fault-driver stated his “speed was probably barely 5 mph.” *Id.* at 3. The officer at the scene of the accident did not observe damage to either vehicle. *Id.* Shin complained of head and back pain at the scene and was evaluated by the fire department. *Id.* at 2.

Shin reported to Allstate after the collision he had a headache, dizziness, and nausea. Dkt. 28-1 at 42. He also reported whiplash and that his head slammed against the headrest of his vehicle. *Id.* On May 24, 2022, after this lawsuit was initiated, Shin testified he was at a complete stop when the collision occurred and the car behind him “slammed” into his car. Dkt. 31-2 at 14-15, Shin Depo. He did not hit the car in front of him and thought the impact may have pushed his

1 car forward “a little bit.” *Id.* at 15. Shin said he did not know how fast the car that hit him was
2 going, but his head slammed back against the headrest and he had whiplash. *Id.* at 16. Shin had
3 noticeable pain in his back. *Id.* at 9. He had a headache, dizziness, and nausea. *Id.* Shin’s back
4 pain reduced after the first several weeks; he began experiencing sciatic pain a couple months
5 later. *Id.* Shin testified that prior to the accident Dr. Irene Young suggested a little bit of physical
6 therapy for his complaints of back pain, but it was his impression that prior to the accident Dr.
7 Young said Shin’s back was okay. *Id.* at 12.

8 ii. *Medical Evidence*

9 The medical evidence shows, the day before the accident, on May 1, 2019, Shin was
10 treated for low back pain. Dkt. 31-1 at 1. At that appointment, Shin complained of back pain that
11 was a pain level of 3-7 out of 10. *Id.* He complained of a grinding feeling and “an ‘impingement’
12 cramping tightness.” *Id.* Plaintiff was diagnosed with right lumbar paresthesia, right lumbar
13 segmental dysfunction, T1 scoliosis, lumbar degenerative disc disease, and history of liver
14 transplant. *Id.* at 4. The provider, Dr. Irene Young, wanted further x-rays and noted the next step
15 would be physical therapy. *Id.* The treatment notes state Shin and the provider “discussed several
16 treatment options for [Shin’s] back pain including the option to do nothing.” *Id.* The treatment
17 notes also indicate Shin had been seen for back pain three to four months prior and physical
18 therapy was recommended. *Id.* Shin did not try physical therapy at that time. *Id.*

19 Shin was treated on June 21, 2019 by Matthew Jensen, D.C. for complaints related to the
20 motor vehicle accident. Dkt. 31-5. Dr. Jensen opined that the collision caused Shin’s injuries and
21 recommended five weeks of chiropractic care and four weeks of massage therapy. *Id.* at 2-3; *see*
22 *also* Dkt. 31-13 (April 1, 2020 letter from Dr. Jensen stating Plaintiff’s current injuries were
23 from the motor vehicle accident). Shin had back surgery on July 7, 2020. *See* Dkt. 31-7.

1 After this lawsuit was initiated, during an August 17, 2022 deposition, Dr. Young stated
2 Shin had underlying degenerative changes that she thought were “lit up by the accident.” Dkt.
3 31-3 at 5, Young Depo. She opined that Shin would not necessarily experience increased back
4 pain absent the car accident. *Id.* She opined that the accident “likely irritated things.” *Id.* at 9.

5 On March 9, 2023, Dr. Amir Abdul-Jabbar, Shin’s treating surgeon, testified that he did
6 not know what caused Shin’s lumbar disk herniations and could not rule out that the herniations
7 were caused by trauma. Dkt. 31-16 at 5. Dr. Abdul-Jabbar stated he “could not rule it in or rule it
8 out” that Shin’s symptoms and pain were caused by the car accident, but it was possible the
9 treatments Shin received were related to the accident. *Id.* at 6-7.

10 iii. *Allstate’s Claim Handling*

11 Allstate opened a claim file on May 2, 2019, the date of the accident. Dkt. 28-1 at 49. On
12 May 7, 2019, Allstate sent Shin PIP/Med Pay forms and instructions for coverage. *See id.* at 46.
13 Allstate then contacted Shin by email and sent a letter on May 10, 2019, asking Shin to call
14 Allstate to discuss the accident. *Id.* at 45-46. Shin emailed Allstate back on May 11, 2019, and
15 stated he would try to be in contact sometime the next week and provided Allstate with his
16 attorney’s name. *Id.* at 44. Allstate emailed Sinn on May 13, 2019, requesting Shin call to
17 provide a verbal statement. *Id.* The claim file indicates Allstate obtained additional information
18 related to Shin’s claim, such as a police report and information regarding the at-fault-driver. *See*
19 *id.* Allstate contacted Shin again at the end of May 2019 regarding his claim status. *Id.*

20 On June 4, 2019, Allstate spoke with Shin and Shin provided a recorded statement. Dkt.
21 28-1 at 42-43. The claim file notes states that Shin would call Allstate when he was ready for
22 repairs on his vehicle and “no follow up necessary.” *Id.* at 43.

1 Allstate emailed with Shin's attorney on July 2, 2019, and spoke with Shin's attorney on
2 July 3, 2019; counsel notified Allstate that Shin would contact Allstate "when ready." Dkt. 28-1
3 at 41. On July 5, 2019, Allstate set the PIP/Med Pay Offset at \$10,000 and estimated the general
4 damages would be \$10,000 and made a starting reserve amount of \$10,000. Dkt. 31-9 at 1.
5 Allstate's claim file notes state that Allstate was leaving the reserves "as is" but might adjust in
6 the future depending on the time frame and duration of care. *Id.* at 2. A July 2020 claim file note
7 states the PIP of \$10,000 had been exhausted and the property damage was less than \$1,000. Dkt.
8 31-10 at 4. Allstate increased the reserve to \$165,000 after Shin's counsel contacted Allstate on
9 July 21, 2020, and informed Allstate that Shin had back surgery related to injuries suffered in the
10 collision and anticipated making a policy limits demand. Dkt. 33, Andrade Dec., ¶ 9. The reserve
11 was increased solely on the information from Shin's counsel and the "case reserve was not based
12 on or supported by medical records, medical billing, or expert opinions." *Id.*

13 Allstate paid \$ 889.63 for the repairs to Shin's car in September of 2019. Dkt. 28-1 at 13.
14 A letter dated October 8, 2019, showed that Allstate had paid for Shin's medical bills received
15 through October 3, 2019, which was \$10,000 in PIP. *Id.* at 11.

16 In September of 2020, Allstate's claim file notes indicate Shin's case was being referred
17 to the home office due to the injury claimed, loss reserves currently on file, and potential
18 exposure that exceeded local authority guidelines. Dkt. 31-10 at 1. The file notes indicate
19 Allstate would need a biomechanical expert to determine the mechanism for injury because it
20 was a minor impact and Shin was alleging surgery was warranted as a result of the impact. *Id.*

21 On January 21, 2021, Joseph Andrade, the Allstate claim manager handling Shin's case,
22 contacted EFI Global, Inc. and requested EFI "examine file information and photographs in
23 order to evaluate the injury potential of a rear-end collision in which the front of a 1993 Accord
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1 4-door sedan struck the rear of a 2017 Mazda 3 4-door hatchback.” Dkt. 28-1 at 56. EFI issued a
 2 Biomechanical Report on March 1, 2021. *Id.* at 55-59. EFI determined the rear impact velocity
 3 change imparted to the Mazda 3 (Shin’s vehicle) was calculated to be 6-8 mph. *Id.* at 59. EFI
 4 also concluded that a rear impact velocity of this magnitude would be sufficient to produce the
 5 potential for soft tissue injuries. *Id.*

6 On March 5, 2021, Dr. Brendan Masini, M.D. authored a report outlining Shin’s medical
 7 treatment related to his lower back pain and stating he determined Shin had conditions or injuries
 8 of degenerative disc disease, particularly at L5-S1 where Shin was noted to have facet
 9 arthropathy with grade 1 anterolisthesis and formation of the synovial cyst. Dkt. 28-1 at 26-29.
 10 Dr. Masini also noted Shin was postoperative from decompression of the L5-S1 level as of July
 11 2020. *Id.* at 29. Dr. Masini stated he did not find Shin’s current complaints to be solely
 12 attributable to the May 2, 2019 car accident. *Id.* He opined Shin’s complaints were related to his
 13 prior condition, which was the natural progression of Shin’s pre-existing lumbar degenerative
 14 disease. *Id.* Dr. Masini also opined that the mechanism of injury described in the records did not
 15 “objectively demonstrate change in [Shin’s] pre-existing disease course following the motor
 16 vehicle accident” and he did not find the documentation supported a causal relationship between
 17 the reported injuries and the accident. *Id.* at 30.

18 On January 29, 2021, Allstate received Shin’s demand for policy limits. Dkt. 28-1 at 52.²
 19 Allstate continued to investigate Shin’s UIM claim and relied on all the available information,
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21
 22 ² In the demand letters, Shin’s attorney states Dr. Peter Meinhofer, D.C. evaluated Shin on June 21, 2019.
 23 See Dkts. 31-11, 31-13. The record does not appear to include any treatment notes or opinions authored by Dr.
 24 Meinhofer. Rather, Dr. Meinhofer’s opinion appears to be the same as Dr. Jensen, who did treat Shin on June 21,
 2019 and formed the opinions attributed to Dr. Meinhofer. See Dkt. 31-5. While the Court would find this is a
 typographical error, Shin’s counsel appeared to direct Allstate to find Dr. Meinhofer’s opinion was supported by Dr.
 Jensen’s opinion. See Dkt. 31-13 at 4.

including but not limited to, medical records, medical billing, the biomechanical report, and records review by Dr. Masini, in reaching its claim valuation. Dkt. 33, Andrade Dec., ¶ 11. Allstate valued Shin's claim with a gross value range of \$12,835.54-\$15,835.5, which included a PIP offset and *Hamm* fees.³ *Id.* On March 11, 2021, Allstate offered to resolve the claim. *See* Dkt. 31-12. Allstate concluded that it was questionable whether any of the treatment was related to the accident or was from pre-existing conditions. *Id.* Allstate offered Shin \$19,277.77 plus Hamm fees, which accounted for five months of treatment for a soft tissue injury and an additional \$7,000 in general damages. *Id.*

In response to Allstate's settlement offer, Shin's counsel sent Allstate a letter on August 19, 2021. Dkt. 31-13. Shin's counsel outlined Shin's position on his medical treatment and its relationship to the accident and stated that a payment of policy limits of \$250,000 with a waiver of any PIP offset was the only appropriate response. *Id.* Shin's counsel stated Shin would be filing suit if policy limits were not immediately tendered to Shin. *Id.*

Allstate requested an addendum to the Record Review of Jay Shin. *See* Dkt. 31-14. Dr. Masini stated, "It is my medical opinion that the additional documents do not change the findings of my prior record review and prior expressed opinions in that report." *Id.* at 3.

Shin initiated this lawsuit in King County Superior Court on November 3, 2021. Dkt. 1-1.

C. Bad Faith and Insurance Fair Conduct Act

Allstate asserts Shin's bad faith and IFCA claims should be dismissed. Dkt. 27. Shin contends Allstate's conduct was unreasonable because Allstate (1) failed to conduct a prompt

³ *Hamm* fees "require a PIP insurer 'to share pro rata in the attorney fees incurred by an injured person when the recovery benefits the PIP insurer.'" *Heide v. State Farm Mut. Auto. Ins. Co.*, 261 F. Supp. 3d 1104, 1106 (W.D. Wash. 2017) (quoting *Matsyuk v. State Farm Fire & Cas. Co.*, 173 Wash.2d 643, 647, 272 P.3d 802 (2012)); *see also Hamm v. State Farm Mut. Auto. Ins. Co.*, 151 Wash.2d 303 (2004).

1 and reasonable investigation; (2) failed to effectuate a prompt and equitable settlement; (3)
 2 compelled Shin to litigate to recover adequate compensation; and (4) denied payment of benefits
 3 for Shin's new back injuries and exacerbated pre-existing conditions. Dkt. 30 at 15-17. Shin,
 4 therefore, argues Allstate's conduct constitutes bad faith and violates IFCA. *Id.*

5 An insurer has a duty of good faith to its policyholder and violation of that duty may give
 6 rise to a tort action for bad faith. *Truck Ins. Exch. v. Vanport Homes, Inc.*, 147 Wash.2d 751, 765
 7 (2002). Claims by insureds against their insurers for bad faith are analyzed applying the same
 8 principles as any other tort: duty, breach of that duty, and damages proximately caused by any
 9 breach of duty. *See Safeco Ins. Co. v. Butler*, 118 Wash.2d 383, 388 (1992). A policyholder
 10 asserting bad faith bears a heavy burden, and such a claim is not easy to establish. *Overton v.*
 11 *Consolidated Ins. Co.*, 145 Wash.2d 417, 433 (2002). The insured must show that the insurer's
 12 breach of the insurance contract was "unreasonable, frivolous, or unfounded." *Id.* The
 13 insurer must have "no reasonable justification" for its evaluation of the claim. *Starzewski v.*
 14 *Unigard Ins. Grp.*, 61 Wash.App. 267, 810 P.2d 58, 62 (1991).

15 An insurer acts in bad faith when it denies coverage based upon mere suspicion and
 16 conjecture, fails to conduct a good faith investigation of the facts before denying coverage, or
 17 denies coverage based on a supposed defense that a reasonable investigation would have proved
 18 to be meritless. *Industrial Indem. Co. of the Northwest, Inc. v. Kallevig*, 114 Wash.2d 907, 917
 19 (1990). "The insured may present evidence that the insurer's alleged reasonable basis was not the
 20 actual basis for its action, or that other factors outweighed the alleged reasonable basis." *Smith v.*
 21 *Safeco Ins. Co.*, 150 Wash.2d 478, 78 P.3d 1274, 1278 (2003) (en banc). However, an insurer's
 22 conduct in litigation, after being sued for bad faith, is not a proper basis for a claim of bad faith.
 23 *See Lock v. American Family Ins. Co.*, 12 Wash. App. 2d 905 (2020).

IFCA provides that any “first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action ... to recover the actual damages sustained.” RCW 48.30.015(1). However, “IFCA does not create an independent cause of action for regulatory violations.” *Perez-Crisantos v. State Farm Fire & Cas. Co.*, 187 Wash.3d 669, 684 (2017). An “insured must show that the insurer unreasonably denied a claim for coverage *or* that the insurer unreasonably denied payment of benefits.” *Id.* at 683. A determination of whether an offer effectively denies an insured the benefits of the insurance policy should focus “primarily on what [the insurer] knew or should have known at the time the offer was made.” *See Morella v. Safeco Ins. Co. of Ill.*, 2013 WL 1562032, at *3-4 (W.D. Wash. Apr. 12, 2013) (“Where an insurer pays or offers to pay a paltry amount that is not in line with the losses claimed, is not based on a reasoned evaluation of the facts ... and would not compensate the insured for the loss at issue, the benefits promised in the policy are effectively denied.”).

First, Shin asserts Allstate did not conduct a reasonable investigation. Dkt. 30. Shin contends that Allstate made an unreasonably low settlement offer despite an internal claim valuation of \$175,000⁴ and having access to hundreds of medical records. *Id.* at 15. Shin also argues Allstate made no effort to investigate, for example, how Shin’s liver complications addressed his ability to deal with pain after the accident. *Id.*

⁴ Shin contends the reserve was set at \$175,00. *See* Dkt. 30. Allstate submitted evidence showing the reserve was increased to \$165,000 after Allstate received Shin’s counsel’s July 21, 2020 email. Dkt. 33, Andrade Dec., ¶ 9. The claim file indicates the net reserve was \$165,000, which was a gross reserve of \$175,000 less the \$10,000 in PIP. *See* Dkt. 31-10 at 4. The Court finds Shin has not disputed Allstate’s showing that the applicable reserve amount is \$165,000. However, any dispute between the reserve amounts is not material to this Court’s determination.

1 The evidence, as discussed in detail above, indicates Allstate opened a claim file on the
2 date of the accident. Allstate obtained the police report, contacted the insurance company for the
3 at-fault-driver, and attempted to locate the driver and owner of the vehicle driven by the at-fault-
4 driver. Allstate was in contact with Shin or Shin's attorney at least every 30 days asking for
5 updates. *See* Dkt. 28-1 at 15. Shin, or his attorney, informed Allstate that Shin would contact
6 Allstate when he was ready regarding both medical and property claims. Allstate paid \$10,000 in
7 PIP for medical bills tendered to Allstate through October 3, 2019. Allstate also paid for the
8 repairs to Shin's vehicle. When Shin indicated the accident caused injuries that required back
9 surgery, the evidence shows Allstate increased the claim reserve to \$165,000 and obtained
10 opinions from a medical expert and a biomechanical expert.

11 Dr. Masini, Allstate's medical expert, did not find a causal relationship between the
12 collision and Shin's injuries. However, Dr. Jenson, Shin's treating chiropractor, opined that the
13 collision caused Shin's injuries and recommended five weeks of chiropractic care and four
14 weeks of massage therapy and the biomechanical expert determined the accident could
15 potentially cause soft tissue injuries. After consideration of all the information obtained during
16 the investigation, Allstate valued the claim to have a gross value range of \$12,835.54-
17 \$15,835.50, which included a PIP offset and Hamm fees. Allstate offered Shin \$19,277.77 plus
18 Hamm fees, which accounted for five months of treatment for a soft tissue injury and an
19 additional \$7,000 in general damages. Based on the evidence before the Court, Allstate has
20 shown it conducted a prompt and reasonable investigation of Shin's claim.

21 Shin claims the offer was unreasonably low given Allstate's description of the offer as a
22 "compromise" and because the reserve was set at \$175,000. *See* Dkt. 30. Evidence shows
23 Allstate used the word "compromise" in a voicemail to Shin's counsel when communicating the
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1 settlement offer. Shin has not shown this creates a question of material fact. The evidence
2 reflects that Allstate offered Shin a settlement amount that was consistent with its valuation of
3 Shin's claim. Allstate offered Shin \$19,277.77 plus *Hamm* fees after valuing the claim at
4 \$12,835.54-\$15,835.50. Further, Allstate increased the reserve solely on information from Shin's
5 counsel regarding Shin's medical treatments, not based on a valuation of Shin's claim. There is
6 nothing in the record indicating Allstate valued Shin's claim at \$175,000 yet offered less than
7 \$20,000 to resolve the claim.

8 Shin has not overcome Allstate's showing that there is no genuine issue of material fact
9 regarding whether Allstate's investigation of Shin's claim was reasonable. *See GCG Assocs. LP*
10 *v. Am. Cas. Co. of Reading Pennsylvania*, 2008 WL 3542620, at *10 (W.D. Wash. Aug. 8, 2008)
11 (granting summary judgment and finding the insurer is required to investigate claims in a
12 reasonable manner before determining coverage, but is not required to undertake the most
13 extensive investigation possible).

14 Second, Shin asserts Allstate's failure to effectuate a prompt and equitable settlement
15 constituted bad faith and violated IFCA. Dkt. 30 at 16. Shin states that liability and coverage
16 were "abundantly clear" when Allstate offered a "compromise" settlement. *Id.* He also contends
17 his medical bills exceeded \$24,000 at the time of the settlement offer and that Allstate engaged
18 in a fishing expedition to find pre-existing injuries to "get out of paying fair value" for Shin's
19 claim. *Id.* There is no evidence showing Allstate attempted to place fault for the accident on
20 Shin; rather, the evidence shows Allstate paid for repairs for Shin's property damage and paid
21 \$10,000 in PIP. Further, the undisputed evidence shows Allstate conducted a reasonable
22 investigation into Shin's injuries. Shin does not provide sufficient citations to the evidence to
23 support his assertion that the alleged \$24,000 in medical bills were solely a result of the accident.
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1 Shin's arguments are merely speculation, without evidence, that Allstate engaged in a fishing
2 expedition and that \$24,000 in medical bills were attributed to the accident. This is not sufficient
3 to show a genuine issue of material fact regarding a bad faith or IFCA claim.

4 Third, Shin asserts that Allstate compelled Shin to initiate litigation when Allstate offered
5 Shin substantially less than the value of his claim. Dkt. 30 at 16. Shin again emphasizes that
6 Allstate valued Shin's claim to be \$175,000 or more. *Id.* As the undisputed evidence shows,
7 Allstate valued the claim to be between \$12,835.54 and \$15,835.50. The reserve was originally
8 set at \$10,000 and was increased to \$165,000 after Allstate received limited information from
9 Shin's attorney regarding Shin's injuries. The "case reserve was not based on or supported by
10 medical records, medical billing, or expert opinions." Dkt. 33, Andrade Dec., ¶ 9. The Court
11 finds there is no genuine issue of material fact that Allstate offered an amount that was
12 substantially less than its own internal valuation of the claim.

13 Fourth, Shin states Allstate unreasonably denied payment of benefits for Shin's new back
14 injuries and exacerbated pre-existing conditions. Dkt. 30 at 17. Shin argues there are competing
15 medical experts -- Allstate's expert determined the accident did not cause Shin's injuries and
16 Shin's treating providers (Drs. Jensen and Young) concluded that the accident caused Shin to
17 suffer new injuries and exacerbate pre-existing injuries. *Id.* Shin maintains that this fact alone
18 precludes summary judgment. *Id.*

19 The Court finds Shin has not provided an adequate explanation regarding what portions
20 of Drs. Jensen's and Young's opinions contradict Allstate's position on causation and claim
21 valuation. *See* Dkt. 30 at 17. Shin appears to argue that, because Allstate's medical review
22 expert, Dr. Masini, determined the accident did not cause Shin's injuries, Allstate relied on Dr.
23 Masini's opinion and discounted Drs. Jensen's and Young's opinions. However, the record
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1 reflects that Allstate questioned causation and did not outright deny causation; rather, Allstate
2 questioned the extent of Shin's injuries and relied on a reasonable valuation based on the entire
3 claim file.

4 As previously discussed, the record before the Court shows Allstate conducted a
5 reasonable investigation into Shin's claim. Allstate obtained a medical expert and a
6 biomechanical expert. The biomechanical expert concluded that a rear impact velocity of the
7 magnitude of the collision would be sufficient to produce the potential for soft tissue injuries.
8 Dkt. 28-1. Allstate's medical expert, Dr. Masini, reviewed Shin's treatment history, including
9 Shin's treatment with Drs. Young and Chang, his back surgery, and chiropractic notes from
10 2019. *See id.* at 26-29. Dr. Masini did not find the documentation supported a causal relationship
11 between the reported injuries and the accident. *Id.* at 30.

12 After considering the records and opinions available at the time, Allstate determined five
13 months of treatment for soft tissue injuries was appropriate. Allstate did not fail to respond to
14 Shin's demand, nor did Allstate value the claim at zero or conclude there was no causation.
15 Rather, evidence shows Allstate did not find the accident caused the level of injury that Shin
16 alleged. Allstate offered Shin payment for five months of treatment for soft tissue injuries,
17 consistent with the biomechanical expert's opinion that the accident could cause soft tissue
18 injury. Allstate's position was also consistent with Dr. Jensen's initial opinion that Shin needed
19 four to five weeks of massage and chiropractic treatment for injuries caused by the accident. *See*
20 Dkts. 28-1, 31-12.

21 After Allstate valued the claim, on August 19, 2021, Shin renewed his demand and made
22 it clear Allstate's settlement offer was unacceptable and he intend to file suit. *See* Dkt. 31-13.
23 Shin attached a new opinion from Dr. Jensen that stated Shin's injuries were related to the
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1 accident. Dkt. 31-13 at 5. In August 2022, over eight months after Shin filed this lawsuit, Dr.
2 Young opined that the accident “likely irritated things” in Shin’s back. Dkt. 31-1 at 9. The
3 Court’s inquiry must determine if Allstate’s conduct was reasonable based on the information
4 Allstate knew or should have known at the time of the offer. Shin’s *post hoc* argument and
5 evidence provided after Shin’s demand --which put Allstate on notice the case would be litigated
6 that his injuries are more severe than valued by Allstate -- is irrelevant to this Court’s
7 reasonableness determination. The record reflects Allstate did not have access to Dr. Jensen’s
8 April 2020 opinion until after Shin sent a demand letter that made it clear this case was going to
9 be litigated. *See Arestad v. Liberty Mut. Fire Ins. Co.*, 2022 WL 17832194, at *3 (W.D. Wash.
10 Dec. 21, 2022). There is no evidence Allstate knew or should have known about Dr. Jensen’s
11 new opinion and Dr. Young did not provide her opinion until after this lawsuit had been initiated.
12 Regardless, the opinions only opine that the collision caused a back injury. The evidence does
13 not show Allstate disputes the collision caused a back injury, but shows Allstate and Shin
14 disagree about the extent of the injuries and the value of the claim. Thus, the evidence fails to
15 show Allstate’s investigation and offer unreasonably disregarded Shin’s new and exacerbated
16 back conditions.

17 Shin also alleges Allstate violated Washington Administrative Code § 284-30-330
18 constituting an IFCA violation. Dkt. 1-1 at 6. The Washington State Supreme Court has made
19 clear that IFCA violations cannot be premised on violations of the WAC. *Hanson v. State Farm*
20 *Mut. Auto. Ins. Co.*, 261 F. Supp. 3d 1110, 1116 (W.D. Wash. 2017) (citing *Perez-Crisantos*,

389 P.3d at 483). Therefore, Shin's IFCA claim for Allstate's alleged violation of the WAC must be dismissed.⁵

In sum, the record does not reflect bad faith. This is not a situation where the insurer unreasonably denied payment prior to *any* investigation while relying on mere suspicion or conjecture. *See e.g., McGee-Grant v. Am. Family Mut. Ins.*, 2016 WL 126429, at *4 (W.D. Wash. Jan. 12, 2016) (finding bad faith investigation where insurer denied payment prior to reviewing medical records); *Scanlon v. Life Ins. Co. of N. Am.*, 670 F. Supp. 2d 1181, 1195-96 (W.D. Wash. 2009) (holding that insurer conducted a bad faith investigation where it denied the insured's claim by relying upon single doctor's two sentence memorandum, ignoring multiple medical professionals' conflicting conclusions, and failing to further investigate claim); *Aecon Bldgs., Inc. v. Zurich N. Am.*, 572 F. Supp. 2d 1227, 1236-38 (W.D. Wash. 2008) (holding that investigations were not conducted in good faith where insurers did not conduct any investigation and made assumptions without a factual basis before denying claim). Rather, Allstate conducted an investigation and had a factual basis and reasonable justification for the evaluation of Shin's claim. The fact that Allstate did not resolve the claim in the manner requested by Shin does not, alone, render Allstate's investigation and conduct unreasonable. The Court finds no reasonable

⁵ As the Court determined Shin's arguments and evidence in support of his bad faith claims are not sufficient to overcome Allstate's summary judgment showing, the Court need not further discuss the IFCA bad faith claim. However, the Court notes "[a] mere disagreement about the amount of damages based on available evidence cannot ground a claim for failure to investigate." *Aspin v. Allstate Prop. & Cas. Co.*, 2020 WL 3000514, at *3 (W.D. Wash. June 4, 2020) (internal quotations omitted). Shin has not identified evidence supporting an unreasonable denial of payment of benefits beyond Allstate's disagreement with the valuation of Shin's claim. Shin has also failed to provide sufficient evidence to overcome Allstate's showing that Allstate investigated the claim and considered all records in the claim file when valuing the claim. Therefore, Shin's IFCA claim fails. *See Garrison v. Allstate Insurance Co.*, 2022 WL 1061916 (W.D. Wash. April 8, 2022) (granting summary judgment where the plaintiff only showed a disagreement over valuation); *Jelinek v. Am. Nat'l Prop. & Cas. Co.*, 747 F. App'x 513, 515 (9th Cir. 2018) ("A delay in payment due to a good-faith dispute over the value of a claim does not amount to a denial of benefits under IFCA."); *Aspin*, 2020 WL 3000514 at *3 (finding no IFCA claim where the plaintiff failed to offer evidence showing Allstate's investigation was unreasonable or that it ignored evidence the insured provided when valuing the claimed losses).

1 jury could conclude Allstate's conduct regarding Shin's claim was unreasonable, frivolous, or
2 unfounded. Therefore, Shin's bad faith and IFCA claims fail.

3 D. Consumer Protection Act

4 Shin also alleges Allstate violated the CPA. Dkt. 1-1 at 7. In order to recover under the
5 CPA, a plaintiff must prove "(1) unfair or deceptive act or practice; (2) occurring in trade or
6 commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property;
7 [and] (5) causation." *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105
8 Wash.2d 778, 719 P.2d 531, 533 (1986) (en banc). "Even if incorrect, a reasonable denial of
9 coverage by the insurer is not a violation of the CPA." *Gingrich v. Unigard Sec. Ins.*, 57
10 Wash.App. 424, 788 P.2d 1096, 1102 (1990) (citing *Villella v. Public Employees Mut. Ins. Co.*,
11 106 Wash.2d 806, 725 P.2d 957, 965 (1986)). Unlike an IFCA claim, a CPA claim can be
12 predicated on a violation of WAC § 284–30–330. *Perez–Crisantos*, 389 P.3d at 483 (violation of
13 WAC § 284–30–330 satisfies elements 1 and 2). Like a bad faith claim, a CPA violation turns on
14 the reasonableness of the insurer's actions.

15 Based on the undisputed evidence, viewed in the light most favorable to Shin, Allstate's
16 claims managing was not unreasonable. As discussed in detail above, Allstate investigated Shin's
17 claim, obtained records, including medical and billing records, a medical expert's opinion and a
18 biomechanical expert's opinion and then, considering all the information in the claim file, valued
19 Shin's claim. *See* Dkt. 33, Andrade Dec. There is no evidence Allstate's conduct was
20 unreasonable. Rather, the evidence indicates a dispute regarding the value of the claim. No
21 reasonable juror could conclude Allstate acted unreasonably in its investigation and valuation of
22 Shin's claim. Therefore, the Court finds no genuine issue of material fact remains regarding
23 Shin's CPA claim.

III. Conclusion

Based on the record before the Court, no reasonable jury could conclude Allstate's claim handling conduct constituted bad faith or violated IFCA or the CPA. Therefore, the Partial Motion for Summary Judgment (Dkt. 27) is granted and Shin's bad faith, IFCA, and CPA claims are dismissed with prejudice.

Dated this 14th day of June, 2023.



David W. Christel
Chief United States Magistrate Judge